



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

October 1, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 20, 2012. Your hearing request was based on the Department of Health and Human Resources' determination that you no longer continue to meet the medical eligibility requirements for the SSI-Related Medicaid Program.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the SSI-Related Medicaid Program is based on current policy and regulations. These regulations provide that in order to be considered disabled, an individual over 18 must be unable to engage in any substantial gainful employment by reason of any medically determined physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months or can be expected to result in death. [WV Income Maintenance Manual Section 12.2 (A)]

The information which was submitted at your hearing revealed that you do not meet the criteria necessary to establish a disability for the SSI-Related Medicaid Program.

It is the decision of the State Hearing Officer to uphold the action of the Department to terminate your eligibility for SSI-Related Medicaid benefits.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young-Chairman, Board of Review
Ann Hubbard-Economic Service Supervisor

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1963

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing for ----- . This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on September 20, 2012, on a timely appeal, filed August 8, 2012.

II. PROGRAM PURPOSE:

The SSI-Related Medicaid Program is a segment of the Medicaid Program available to individuals who meet the requirement of categorical relatedness by qualifying as either aged disabled, or blind as those terms are defined by the Social Security Administration for purposes of eligibility for SSI.

III. PARTICIPANTS:

-----, Claimant
Ann Hubbard, Economic Service Supervisor

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Claimant meets the medical eligibility requirements necessary to qualify as a disabled individual for purposes of the SSI-Related Medicaid Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 12.2(A)
20 CFR § 404.1505-404.1545 & 20 CFR § 404.1594, Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Information submitted to the Medical Review Team dated April 18, 2012
- D-3 Additional Medical Request
- D-4 Psychological Evaluation dated June 20, 2012, completed by -----, M.S. Psychologist
- D-5 Medical Review Team decision dated June 27, 2012
- D-6 Notice of Decision dated August 1, 2012
- D-7 West Virginia Income Maintenance Manual Chapter 12.2

Claimant's Exhibits

- C-1 Electronic Mail Transmission from ----- dated September 7, 2012
- C-2 Evaluation from ----- dated November 2, 2011
- C-3 School Records from ----- Education Service Center

VII. FINDINGS OF FACT:

- 1) In April 2012, the Claimant, a recipient of SSI-Related Medicaid benefits, completed a redetermination in order to maintain his medical eligibility for the program. Along with the Claimant's previous determination of disability, the Department submitted the Claimant's updated information, including a Social Summary and General Physical (Exhibit D-2), to the Medical Review Team (MRT) to determine if the Claimant continued to meet the disability requirements under program guidelines.
- 2) The Claimant's updated Social Summary (Exhibit D-2) documents that the Claimant "has not held gainful employment for one year, before that held many jobs on a temporary basis for the past few years."
- 3) The physician who completed a physical examination (Exhibit D-2) of the Claimant for the purpose of the MRT determination documented that the Claimant was "46 years old with multiple medical problems who was recently evaluated with IQ score 72 and was dxed [diagnosed] partial mental retardation. He had non traumatic rt, mts, rx [sic]."

- 4) On June 20, 2012, the Claimant completed a psychological evaluation (Exhibit D-4) as part of additional information and testing requested from the MRT (Exhibit D-3). As part of the evaluation, the Claimant was diagnosed with Generalized Anxiety Disorder, Depressive Disorder (NOS), Paraphelia and Borderline Intellectual Functioning. The psychologist noted in the evaluation the following information:

The anxiety disorder diagnosis is based on his report today of generalized anxiety which occasionally escalates into panic attacks. He also reports a history of multiple hospital visits due to symptoms including chest pain, tingling, feeling like he is having a heart attack and fear of death. The Depressive Disorder diagnosis is based on his report of depressed mood, forgetfulness, decreased energy, and excessive sleep. Paraphelia is based on his history with the Court system. Borderline Intellectual Functioning is based on today's testing, which included a Full Scale IQ of 80 and previous testing which provided a Full Scale IQ of 72.

Based on the above information, it appears that [Claimant] would benefit from continued mental health treatment to deal with depression and anxiety symptoms. Prognosis for improvement is fair at this time.

Additionally, the exhibit documents that the Claimant was last employed in May 2011, for sixty days as part of his transition back into the community after release from federal incarceration.

- 5) In response to the information submitted, MRT issued a Disability/Incapacity Evaluation to the Economic Service Worker on June 27, 2012, regarding the Claimant's disability. Section IV. B of the exhibit documents that the Claimant does not have a medically determinable impairment or combination of impairments which significantly limits his ability to perform basic work activity. Section IV. E of the exhibit documents in pertinent part:

Deny. Client is dxed [diagnosed] G.A.D [Generalized Anxiety Disorder], Depressive D/O [disorder] NOS, Paraphelia by hx [history] BIF [sic]. He exhibits moderate functional limits which would not prevent work activities.

- 6) On August 1, 2012, the Department issued the Claimant a Notice of Decision (Exhibit D-6) documenting that denial of disability for his SSI-Related Medicaid benefits based on the findings of MRT's Disability/Incapacity Evaluation.
- 7) The Claimant acknowledged a mental disability as the basis of his appeal. Due to these mental limitations, the Claimant stated he has held over two hundred jobs since the age of sixteen and has been unable to maintain employment. The Claimant provided an evaluation from -----, dated November 2, 2011, which documents a full scale I.Q. of 72, which the Claimant contends is borderline mental retardation. The Claimant testified that if his Medicaid benefits were terminated, he would be unable to afford his medications and become hospitalized. The Claimant stated that he has applied for benefits with the Social Security Administration and is currently under appeal status with a hearing scheduled for November 20, 2012 (Exhibit C-1).

8) West Virginia Income Maintenance Manual § 12.2 (A):

The definition of disability for Medicaid purposes is the same as the definitions used by SSA in determining eligibility for SSI or RSDI based on disability.

An individual who is age 18 or over is considered to be disabled if he is unable to engage in any substantial gainful activity due to any medically determined physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months or can be expected to result in death.

9) The Federal definition of disability is found in 20 CFR § 404.1505:

There is a five step sequence of questions to be addressed when evaluating claims of disability, these are set forth in 20 CFR § 404.1520.

(1) Is the person performing substantial gainful activity as defined in 20 CFR 404.1510.

(2) Does a severe impairment exist which is expected to last one year or result in death.

(3) If the person has a severe impairment, is the impairment a listed impairment under 20 CFR Part 404, Sub Part P, App. 1 or its medical equivalent?

(4) What is the person's Residual Functional Capacity (20 CFR 404.1545) and can that person still perform his or her former work?

(5) Can the person do any other work based upon the combined vocational factors of residual functional capacity, age, education, and past work experience (20 CFR § 404.1520f)

10) 20 CFR§ 40-4.1509, & 404.1520 Code of Federal Regulations:

Unless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this duration requirement. (404.1509)

Your impairment(s) must be severe and meet the duration requirement before we can find you disabled. If you do not have any impairments or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education and work experience (404.1520).

11) 20 CFR § 404.1508, Code of Federal Regulations:

Impairment must result from anatomical, physiological or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be

established by medical evidence consisting of signs, symptoms and laboratory findings, not only by your statement of symptoms. (404.1508)

12) 20 CFR § 404.1521 Code of Federal Regulations:

(a) Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities.

(b) Basic work activities. When we talk about basic work activities we mean the abilities and aptitudes necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting

13) 20 CFR § 404 Subpart P Appendix 1-12.06

Anxiety Related Disorders: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

a. Motor tension; or

b. Autonomic hyperactivity; or

c. Apprehensive expectation; or

d. Vigilance and scanning; or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
4. Recurrent obsessions or compulsions which are a source of marked distress; or
5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

- B. Resulting in at least two of the following:
1. Marked restriction of activities of daily living; or
 2. Marked difficulties in maintaining social functioning; or
 3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
 4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors);

OR

- C. Resulting in complete inability to function independently outside the area of one's home.

VIII. CONCLUSIONS OF LAW:

- 1) Regulations that govern the SSI-Related Medicaid Program require that an eligible individual must have a severe impairment(s) and meet the duration requirement in order for there to be a disability finding. This is interpreted to mean that unless the disability is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. Impairment must result from anatomical, physiological or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques.
- 2) The Claimant is not currently engaging in a substantial gainful activity and has not maintained employment since his release from prison. However, the medical evidence submitted to the MRT failed to document that the Claimant demonstrated a severe impairment. The Claimant's diagnoses and corresponding documentation failed to support that the Claimant demonstrates a severe physical or mental impairment; therefore, the Department's decision to terminate the Claimant's SSI-Related Medicaid assistance is affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the decision of the Department to terminate the Claimant's SSI-related Medicaid assistance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of October 2012.

Eric L. Phillips
State Hearing Officer